



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2004

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal, PC
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-9707

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 212932.

The San Antonio Water System ("SAWS"), which you represent, received a request for six categories of information relating to action taken authorizing the engagement of an identified law firm and/or named attorney for the purpose of filing a grievance with the State Bar of Texas (the "state bar") on behalf of SAWS against a named individual. You state that SAWS has made some of the requested information available to the requestor, but claim that SAWS does not have information responsive to a portion of the request. The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the state bar and by the requestor. *See Gov't Code* § 552.304 (allowing interested party to submit written comments indicating why requested information should or should not be released).

At the outset, we address the requestor's contention that SAWS did not submit its request for a ruling within the ten business day time period as required by section 552.301 of the Government Code. We note that SAWS received the original request for information on

August 18, 2004. However, you have provided documentation showing that SAWS sought a clarification of the request on August 27, 2004. In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten business day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. In this instance, SAWS received a response from the requestor on September 3, and requested a ruling from this office on September 9, 2004. Accordingly, SAWS's request to this office for a ruling was timely.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. This section encompasses information made confidential by other law. Rule 15.10 of the Texas Rules of Disciplinary Procedure provides:

All communications, written and oral, and all other materials and statements to or from the Commission, Chief Disciplinary Counsel, the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of Inquiries and Complaints are absolutely privileged.

Tex. R. Disciplinary P. 15.10, *reprinted in* Gov't Code Ann., tit. 2, subtit. G app. A-1. You state that Exhibit 1 consists of information that was supplied by SAWS to the state bar relating to an inquiry or complaint. Based on your representations and arguments and our review of this information, we agree that Exhibit 1 is privileged under rule 15.10. This office has previously found information that is "absolutely privileged" to be confidential. *See, e.g.*, Attorney General Opinion JM-1235 (1990); *see also* Open Records Decision Nos. 384 (1983), 375 (1983), 186 (1978). Accordingly, we conclude that Exhibit 1 is confidential under rule 15.10 of the Texas Rules of Disciplinary Procedure and is therefore excepted from disclosure pursuant to section 552.101 of the Government Code. *See* Gov't Code § 81.033(a).

We note that Exhibits 2 and 3 are subject to section 552.022 of the Government Code, which provides, in pertinent part:

¹ We note that SAWS was closed on September 6, 2004, in observance of Labor Day. Therefore, this day does not count towards the ten business day period prescribed by section 552.301 of the Government Code for requesting an attorney general decision.

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted information consists of (1) copies of checks paid to a law firm by SAWS for legal representation and (2) attorney fee invoice approval forms of the law firm representing SAWS. The checks for legal representation are subject to section 552.022(a)(3), and the attorney fee invoice approval forms are subject to section 552.022(a)(16). Accordingly, these records must be released unless they are expressly made confidential under other law. Section 552.103 of the Government Code is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.— Dallas 1999, no pet.) (government body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, SAWS may not withhold any portion of Exhibits 2 and 3 pursuant to section 552.103.

We agree, however, that some of the information in Exhibit 3 is subject to section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, SAWS must withhold the bank account and routing numbers you have marked under section 552.136. We note, however, that individual check numbers are not excepted under section 552.136. Accordingly, SAWS must release the individual check numbers which we have marked.

In summary, Exhibit 1 is confidential under rule 15.10 and must be withheld from disclosure under section 552.101. SAWS must withhold the marked bank account and routing numbers in Exhibit 3 under section 552.136. SAWS must release all remaining information in Exhibits 2 and 3 to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 212932

Enc. Submitted documents

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